

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TAYWON KESHAUN WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED

June 24, 2014

No. 311755

Wayne Circuit Court

LC No. 11-008346-FH

Before: DONOFRIO, P.J., and GLEICHER and M. J. KELLY, JJ.

GLEICHER, J. (*concurring in part and dissenting in part*).

I concur with the majority’s decision to affirm defendant’s convictions. I also agree that the trial court articulated substantial and compelling reasons justifying a departure sentence. “However, the statutory guidelines require more than an articulation of reasons for a departure; they require justification for the *particular* departure made.” *People v Smith*, 482 Mich 292, 303; 754 NW2d 284 (2008) (emphasis in original). In *Smith*, the Supreme Court cautioned that

if it is unclear why the trial court made a particular departure, an appellate court cannot substitute its own judgment about why the departure was justified. A sentence cannot be upheld when the connection between the reasons given for departure and the extent of the departure is unclear. When departing, the trial court must explain why the sentence imposed is more proportionate than a sentence within the guidelines recommendation would have been. [*Id.* at 304.]

The trial court’s articulation must include “an explanation of why the sentence imposed is more proportionate to the offense and the offender than a different sentence would have been.” *Id.* at 311.

The trial court failed to offer an explanation for its decision to impose a minimum sentence of 360 months for the armed robbery, assault, and torture convictions. Although the trial court detailed substantial and compelling reasons warranting a departure, it neglected to offer any explanation “why the substantial and compelling . . . reasons articulated justify” the particular sentence imposed. *Id.* at 318. The sentencing guidelines envision that the top of defendant’s minimum sentence range equaled 225 months. The 360-month minimum term imposed by the trial court represented a 50% departure. In pronouncing defendant’s departure sentence, the trial court made no effort to justify or explain the extent of the departure. Based on the record before this Court, the trial court simply picked a number out of the air.

“[T]he Legislature’s purposes in enacting the sentencing guidelines—in particular the attainment of reasonably uniform and proportionate criminal sentences—can only be achieved if the guidelines are understood to mean what they say.” *Id.* at 319-320 (MARKMAN, J., concurring). While a departure sentence in this case was justified, the reasonableness of the sentence chosen depends on the trial judge’s explanation for imposing an extra 11.25 years’ imprisonment, as opposed to an additional 5 years. Just as this Court may not substitute its own reasons warranting a sentence departure, *People v Babcock*, 469 Mich 247 258-261; 666 NW2d 231 (2003), *Smith* prohibits appellate courts from justifying the extent of a particular departure when the sentencing court has failed to do so. 482 Mich at 304, 318. In light of the trial court’s lack of explanation for selecting the particular sentence imposed, one which substantially exceeded the minimum sentence dictated by the guidelines, I would remand for resentencing.

/s/ Elizabeth L. Gleicher